

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

JOHNNY THOMAS, as Bankruptcy           §  
Trustee of Performance Products, Inc. and   §  
CAROLYN PEARCY, in Her Capacities       §  
As Trustee of the Percy Marital Trust       §  
and Executor of the Estate of James Percy   §

vs.

No. 5:16-cv-951-DAE

LOU ANN HUGHES, ADVANCED           §  
PROBIOTICS INTERNATIONAL, LLC       §  
and PERFORMANCE PROBIOTICS, LLC   §

**APPLICATION FOR CHARGING ORDER**

Plaintiffs Johnny Thomas, as Bankruptcy Trustee of Performance Products, Inc. (“Trustee Thomas”) and Carolyn Percy, in her capacities as Trustee of the Percy Marital Trust and Executor of the Estate of James Percy, (“Percy”) file this Application for Charging Order as follows:

1. On March 4, 2020, the Court awarded judgment (the “Judgment”) as follows: a) Carolyn Percy shall recover from Lou Ann Hughes the amount of \$1,442,580.06 in damages and \$1,200,000.00 in punitive damages plus post judgment interest; and b) Trustee Thomas shall recover from Lou Ann Hughes the amount of \$859,490.00 plus post judgment interest. (Dkt. No. 189). On July 17, 2020, the Court adopted the Magistrate’s Report and Recommendation regarding attorney’s fees awarding Plaintiffs \$409,182.74 in attorney’s fees and expenses. (Dkt. Nos. 212, 224). On July 17, 2020, the Court denied Defendants’ Renewed Motion for Judgment as a Matter of Law and Motion for New Trial. (Dkt. No. 223). Accordingly, the Judgment is final and subject to collection and enforcement. The total amount of the judgment, including attorney’s fees, but excluding post judgment interest, is \$3,911,252.80, which remains unpaid.

2. Lou Ann Hughes is the sole member of a Texas registered limited liability company named M. G. & Sons, LLC. The only asset of M. G. & Sons, LLC is real estate at 737 Isom Road, San Antonio, Texas (the “Property”) that Hughes owned personally until she formed M. G. & Sons, LLC and transferred the real estate to the company. Attached hereto as **Ex. A** are true and correct copies of the Certificate of Formation and 2018 Public Information Report for M. G. & Sons, LLC.

3. As a judgment debtor, Ms. Hughes’ membership interest in M. G. & Sons, LLC is subject to a charging order under Tex. Bus. Org. Code §101.112.

(a) On application by a judgment creditor of a member of a limited liability company or of any other owner of a membership interest in a limited liability company, a court having jurisdiction may charge the membership interest of the judgment debtor to satisfy the judgment.

(b) If a court charges a membership interest with payment of a judgment as provided by Subsection (a), the judgment creditor has only the right to receive any distribution to which the judgment debtor would otherwise be entitled in respect of the membership interest.

(c) A charging order constitutes a lien on the judgment debtor’s membership interest.

Tex. Bus. Orgs. Code Ann. § 101.112

4. A charging order directs that any membership distributions, profits, cash, assets, or other monies due or that shall become due to the debtor by virtue of a membership interest be paid to the judgment creditor. *Pajoo v. Royal W. Investments LLC, Series E*, 518 S.W.3d 557, 560 (Tex. App.—Houston [1st Dist.] 2017, no pet.). Accordingly, the Court should grant this application and grant a charging order directing that M. G. & Sons, LLC pay to Plaintiffs all funds and assets whatsoever, which by virtue of Hughes’ membership interest would have been distributed to Hughes.

5. The jury found that Hughes engaged in fraudulent transfers for the purpose of hindering Percy from collecting the state court judgment in Cause No. C2007-0787D; *Percy v. Hughes and Performance Products, Inc.*; in the 433rd Judicial District Court of Comal County, Texas (the

“State Court Lawsuit”) and that Hughes used Performance Products, Inc. and Performance Probiotics, LLC as a sham to perpetrate a fraud and to avoid an obligation for her own personal benefit. These jury findings are reflected in the Judgment. Because Hughes has demonstrated the a pattern of fraudulent transfers and misuse of the corporate fiction, the Court’s charging order should further protect against the possibility of such actions with regard to M. G. & Sons, LLC and its sole asset, the real estate at 737 Isom Road, San Antonio, Texas, by requiring Hughes and M. G. Sons, LLC to obtain leave of Court before: a) transferring the Property to any third party; b) transferring any funds to any third party except for transactions in the ordinary course of business; or c) transferring her interest (or any part thereof) in M. G. & Sons, LLC to any third party.

4. WHEREFORE premises considered, Plaintiffs respectfully request that the Court grant a charging order for the membership interest of Lou Ann Hughes in M. G. & Sons, LLC and all such further relief to which Plaintiffs may show themselves justly entitled at law and in equity.

Respectfully submitted,

*/s/ Daniel R. Richards*

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**ATTORNEYS FOR PLAINTIFFS**

**JOHNNY THOMAS, AS**

**BANKRUPTCY TRUSTEE FOR**

**PERFORMANCE PRODUCTS, INC.**

**AND CAROLYN PEARCY, IN HER**

**CAPACITIES AS TRUSTEE OF THE**

**PEARCY MARITAL TRUST AND**

**EXECUTOR OF THE ESTATE OF**

**JAMES PEARCY**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 27, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically notify the following counsel of record electronically:

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*/s/ Daniel R. Richards*

**DANIEL R. RICHARDS**